UNITED NATIONS

E/NL.1997/2
7 April 1997

ENGLISH ONLY*

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF
THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative text.

GERMANY

Communicated by the Government of Germany

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

FIFTH ORDINANCE AMENDING THE REGULATIONS CONCERNING NARCOTIC DRUGS (FIFTH NARCOTIC DRUGS AMENDING ORDINANCE) OF 18 JANUARY 1994

*Note by the Secretariat: This text is a direct reproduction of a translation from German into English, communicated to the Secretariat by the Government of the Federal Republic of Germany.

Fifth Ordinance
Amending the Regulations concerning Narcotic Drugs
(Fifth Narcotic Drugs Amending Ordinance)
of 18 January 1994

On the basis of Section 1 paragraph 2 of the Narcotics Act of 28 July 1981 (Federal Law Gazette I, pp. 681, 1187) and after having heard experts, as well as on the basis of Section 13 paragraph 3 of the Narcotics Act, the Federal Government adopts the following order:

Article 1
Amendment of the Narcotics Act

The Narcotics Act of 28 July 1981 (Federal Law Gazette I, pp. 681, 1187),[1/] last amended by Article 3 of the Law of 2 August 1993 (Federal Law Gazette I, p. 1407) shall be amended as follows:

1. At the end of Schedule I of the Narcotics Act, the item following the first dash shall be worded as follows:

   "the isomers of the substances listed in this Schedule, except for dextromethorphan, unless listed in a different schedule and where the presence of such isomers may occur under the specific chemical name;".

2. Schedule II of the Narcotics Act shall be amended as follows:

   a) The exceptional provision regarding the item "codeine" shall be worded as follows:

      "- with the exception of preparations which contain up to 2.5 percent or up to 100 mg codeine per dosage unit, calculated as the base, without the addition of any of the substances listed in Schedules I to III -".

1/ E/NL.1981/60

b) The exceptional provision regarding the item "ethylmorphine" shall be worded as follows:

"- with the exception of preparations which contain up to 2.5 percent or up to 100 mg ethylmorphine per dosage unit, calculated as the base, without the addition of any of the substances listed in Schedules I to III -".

c) The item "methadone" shall be deleted along with all the corresponding particulars.

3. Schedule III Part A of the Narcotics Act shall be amended as follows:

a) The following narcotic drugs shall be inserted in alphabetical order:

"amfetaminil 2-(α-methylphenetylamino-)-2-phenylacetonitril
- with the exception of preparations which contain up to 10 mg amfetaminil per dosage unit, calculated as the base, without the addition of any of the substances listed in Schedules I to III -

methadone (±)-6-dimenthylamino-4,4-diphenyl-3-heptanon".

b) The item "morphine" shall be covered by the following exceptional provision:

"- with the exception of preparations which contain up to 0.2 percent morphine, calculated as the base, without the addition of any of the substances listed in Schedules I to III and which consist of one or several other components composed in such a way that the narcotic drug cannot be recovered by a procedure easily applicable or to an extent jeopardizing public health -".

4. Schedule III Part C of the Narcotics Act shall be amended as follows:

a) The exceptional provision regarding the item "bromazepam" shall be worded as follows:

"- with the exception of preparations which contain up to 6 mg bromazepam per dosage unit, without the addition of any of the substances listed in Schedules I to III -".

b) The exceptional provision regarding the item "camazepam" shall be deleted.

c) The exceptional provision regarding the item "chlordiazepoxide" shall be worded as follows:

"- with the exception of preparations which contain up to 25 mg chlordiazepoxide per dosage unit, without the addition of any of the substances listed in Schedules I to III -".

d) The exceptional provision regarding the item "diazepam" shall be worded as follows:

"- with the exception of preparations which contain up to 1 percent as syrup or infusion solution but not more than 250 mg per package unit or up to 10 mg diazepam per dosage unit, without the addition of any of the substances listed in Schedules I to III -".

e) The exceptional provision regarding the item "flunitrazepam" shall be worded as follows:

"- with the exception of preparations which contain up to 1 mg flunitrazepam per dosage unit, without the addition of any of the substances listed in Schedules I to III -"

f) The exceptional provision regarding the item "meprobamate" shall be worded as follows:

"- with the exception of preparations which contain

a) up to 500 mg per dosage unit, without the addition of any of the substances listed in Schedules I to III or

b) with the addition of phenobarbital, up to 200 mg meprobamate per dosage unit -".

g) The exceptional provision regarding the item "secbutabarbital" shall be worded as follows:

"- with the exception of preparations which contain up to 0.5 percent or up to 50 mg secbutabarbital per dosage unit, calculated as the acid, without the addition of any of the substances listed in Schedules I to III -".

Article 2
Transitional provision

Any finished drugs that are already licensed as exempted preparation with up to 2 mg of the narcotic drug flunitrazepam may be prescribed and dispensed under the hitherto applicable provisions until the expiration of 31 March 1994.

Article 3
Amendment of the Ordinance on the Prescription, Dispensing and Recording of the Whereabouts of Narcotic Drugs

The Ordinance on the Prescription, Dispensing and Recording of the Whereabouts of Narcotic Drugs in the version of its notification of 16 September 1993 (Federal Law Gazette I, p. 1637) shall be amended as follows:

1. Section 2 paragraph 1 shall be amended as follows:

   a) Subparagraph a) shall be amended as follows:

      aa) Subsequent to number 5 the following new number 6 shall be inserted:

      "6. methadone 3000 mg,".

      bb) The numbers 6 to 9 so far shall become numbers 7 to 10.

   b) Subparagraph b) shall be amended as follows:

      aa) Subsequent to number 1 the following new number 2 shall be inserted:

      "2. amfetaminil 200 mg,".

      bb) The numbers 2 to 14 so far shall become numbers 3 to 15.

2. Section 2a paragraph 1 shall be worded as follows:

   "(1) For the purpose of substitution within the framework of the treatment of a drug dependence, any medical practitioner may only prescribe levomethadone, methadone or a

narcotic drug licensed for the purpose of substitution. The prescription shall only be admissible, if and as long as the application of said narcotic drug is in compliance with the provisions of Section 13 paragraph 1 of the Narcotics Act, and in observance of the dictates of sound medical practice."

3. Section 8a paragraph 4 shall be worded as follows:

"(4) The agency responsible for or performing the emergency service shall make a written agreement with a pharmacy on supplying the narcotic drugs prescribed as well as on examining the stocks of narcotic drugs kept in the institutions or units of institutions of emergency services at least every six months in order to check, in particular, whether or not they are in perfect condition and correctly and safely stored. The undersigning pharmacist shall notify this to the competent Land authority. A pharmacist of the respective pharmacy shall be charged with the examination of the stocks of narcotic drugs. A record shall be drawn up. Where the pharmacist charged with the examination finds any defects, he shall state a reasonable period for the agency responsible for or performing the emergency medical services to remedy these defects and shall, in the case of non-compliance, notify the Land authority responsible under Section 19 paragraph 1 third sentence of the Narcotics Act accordingly."

Article 4

This Ordinance shall enter into force on the first day of the calendar month following its publication.

The Bundesrat hat given its consent.

Bonn, 18th January 1994

The Federal Chancellor
Dr. Helmut Kohl

The Federal Minister for Health
Horst Seehofer

UNITED NATIONS

E/NL.1997/3-5
30 April 1997

ENGLISH ONLY*

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF
THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

NETHERLANDS ANTILLES

Communicated by the Government of The Netherlands

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

Contents

		Page
1997/3	National Ordinance of May 24 1993 to penalize the laundering of money (National Ordinance penalization of money-laundering)	2
1997/4	National Ordinance of February 10th 1996 concerning the obligation to report unusual transactions when rendering financial services (National Ordinance Reporting of Unusual Transactions)	5
1997/5	National Ordinance of February 10th 1996 containing regulations concerning the identification of customers when rendering financial services (National Ordinance Identification when Rendering Financial Services)	14

*Note by the Secretariat: This document is a direct reproduction of the texts communicated to the Secretariat by the Government of The Netherlands.

NATIONAL ORDINANCE of May 24 1993 to penalize the laundering of money (National Ordinance penalization of money-laundering).

IN THE NAME OF THE QUEEN!

THE GOVERNOR of the Netherlands Antilles,

Whereas:

It is expedient to give effect to article 3 of the Treaty of the United Nations, concluded in Vienna on December 20 1988, against the illicit trade in narcotics and psychotropic drugs (Convention Memorandum 1989, 97) and article 6 of the Treaty, concluded in Strasbourg on November 8 1990, concerning the laundering, detection, seizure and confiscation of proceeds derived from criminal acts (Convention Memorandum 1990, 172), and it moreover is expedient to carry out recommendations 4, 5, 6 and 7 of the Financial Action Task Force on money-laundering.

Now, therefore, has thought fit, by and with the advice of the Advisory Council and in consultation with Parliament, to lay down the following national ordinance:

Article 1

1. The following persons shall be deemed guilty of intentionally laundering money, monetary securities or claims, and shall be punished either with imprisonment of up to twelve years or a money fine of up to one million guilders, or both:

a. he who acquires, has at his disposal or transfers money, monetary securities or claims while at the time the money, monetary securities or the claims were acquired by him or became available to him, he knew or had to know that the same were derived from criminal acts;

b. he who intentionally, for purpose of gain, has at his disposal or transfers money, monetary securities or claims derived from criminal acts.

2. With the same punishment shall be punished he who intentionally reaps a profit from the proceeds of money, monetary securities or claims derived from criminal acts.

For written discussions with Parliament,
see documents sitting 1992-1993-1514.

Article 2

He who makes a habit to intentionally launder money, monetary securities or claims, shall be punished either with imprisonment of up to sixteen years or a money fine of up to one million two hundred and fifty thousand guilders, or both.

Article 3

1. The following persons shall be deemed guilty through default, of the laundering of money, monetary securities or claims and shall be punished either with imprisonment of up to four years or a money fine of up to two hundred and fifty thousand guilders, or both:

a. he who acquires, has at his disposal or transfers money, monetary securities or claims while at the time the money, monetary securities or claims were acquired by him or became available to him, he reasonably should have presumed that the same were derived from criminal acts;

b. he who for purpose of gain, has at his disposal or transfers money, monetary securities or claims while he reasonably must presume that the money, monetary securities or claims were derived from criminal acts.

2. With the same punishment shall be punished he who reaps a profit from the proceeds of money, monetary securities or claims while he reasonably must presume that the money, monetary securities or claims were derived from criminal acts.

Article 4

The acts rendered punishable under this National Ordinance shall be criminal acts.

Article 5

1. The criminal acts under this national ordinance are capable of being committed by individuals and legal entities.

2. If a criminal act under this national ordinance is committed by a legal entity, criminal proceedings may be instituted and the punishments and measures provided for in the Penal Code may be imposed, if same enter into consideration for this:

1. against the legal entity, or
2. against those who have ordered the act to be committed, as also against those who have actually given direction to the illegal actions, or
3. against those mentioned under 1 and 2 together.

3. If criminal proceedings are initiated against a legal entity, the same shall be represented during the prosecution by the manager and, if there are several managers, by any one of these. The representative may appear by proxy. The judge may order the personal appearance of a particular manager; he can then order the same to be brought into court.

4. As regards the criminal acts under this national ordinance, legal entities shall be deemed to reside at the place of their domicile, for the purpose of article 20 of the Code of Criminal Procedure of the Netherlands Antilles.

5. If criminal proceedings are initiated against a legal entity, the serving of notices, writs, summonses, notifications or other communications prescribed in the Code of Criminal Procedure of the Netherlands Antilles shall be effected to the person or the place of residence of the manager and, in case of several managers, to any one of these or at the place where the management holds its meetings or maintains an office, except for, in the case of a writ, analogous application of article 130, second and third paragraphs of the Code of Criminal Procedure of the Netherlands Antilles.

6. For the purposes of the aforegoing paragraphs, the company having no legal personality, the partnership, any other association of persons and the foundation or fund ("doelvermogen"), shall be deemed a legal entity.

Article 6

The Opium National Ordinance 1960 (Official Gazette 1960, no. 65) shall be amended as follows:

In Article 11d, the following words shall be deleted: moneys or other means of payment and claims. Following the word "substances", the comma shall be replaced by a full stop.

Article 7

1. This National Ordinance may be cited as "National Ordinance penalization of money-laundering".

2. This National Ordinance shall become effective as and from the day following that of the publication of the Official Gazette in which the proclamation has been made.

Given at Curaçao, May 24, 1993
J.M. SALEH

The Minister of Justice
S.F.C. RÖMER

Issued on June 4, 1993
the Minister of General Affairs.
M.PH. LIBERIA-PETERS

I, Mrs EYDA ELISABETH BUTÔT née BOOMGAART, a sworn translator residing in Curaçao, Netherlands Antilles, knowing the Dutch and English languages, hereby do certify that the foregoing is a true translation of Official Gazette 1993, no. 52.
IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal of office on this sixteenth day of August, nineteen hundred and ninety-three.

E.E. BUTÔT-BOOMGAART SWORN TRANSLATOR CURAÇAO NETHERLANDS ANTILLES

NATIONAL ORDINANCE of February 10th 1996 concerning the obligation to report unusual transactions when rendering financial services (National Ordinance Reporting of Unusual Transactions).

IN THE NAME OF THE QUEEN!

The Governor of the Netherlands Antilles,

Whereas:

it is expedient to make the reporting of unusual transactions obligatory and also in connection therewith to give effect to recommendations 9, 10, 15, 16, 17, 18, 20, 24, 27, 28 and 32 of the Financial Action Task Force on Money Laundering of May 30 1990;

Now, therefore We have thought fit, by and with the advice of the Advisory Council and in consultation with Parliament, to lay down the following national ordinance:

Chapter I
General provisions

Article 1

In this national ordinance and the stipulations based thereon, the following terms shall have the meaning thereby given:

a. financial services: in or from the Netherlands Antilles:
   1° to take into custody securities, paper currency, coins, currency notes, precious metals and other valuables;
   2° to open an account, on which a balance may be kept in money, securities, precious metals or other valuables;
   3° to rent a safe-deposit box;
   4° to effect payment in connection with the cashing in of coupons or comparable documents of bonds or comparable securities;
   5° to enter into a life insurance contract as referred to in article 1, first paragraph, sub a., of the National Ordinance Supervision of the Insurance Industry, as also to render mediation in connection therewith;

For written discussions with Parliament
see documents Session 1994-1995-1723

6° to make a distribution on account of a life insurance contract as referred to sub 5°;
7° to credit or debit an account, or to cause this to be done, on which account a balance may be kept in money, securities, precious metals or other securities;
8° to exchange guilders or foreign currency;
9° to provide other services to be designated by national decree, containing general measures.

b. oustomer: the individual or legal entity to whom or in whose favour a financial service is rendered, and also, in the case of a financial service as referred to under a., sub 5° and 6°, who pays the premium, as also the party in whose favour the distribution is made.
c. transaction: an act or a set of acts of or in favour of a customer in connection with the taking of one or more financial services;
d. unusual transaction: a transaction that, based on the indicators laid down pursuant to article 10, must be regarded as such;
e. reporting: reporting as referred to in article 11;
f. Reporting Center: the Reporting Center referred to in article 2;
g. committee: the committee referred to in article 16;
h. money laundering: an action rendered punishable in the National Ordinance Penalization of Money Laundering.

Chapter II
The Unusual Transactions Reporting Center

Article 2

There shall be an Unusual Transactions Reporting Center, falling under the minister of Finance and operating under the direction of a head.

Article 3

The task of the Reporting Center shall be:
a. to collect, register, process and analyze the data obtained by it, in order to determine whether these data may be important to prevent and detect money-laundering and the criminal offences that are at the root thereof;
b. to furnish data in conformity with the stipulations laid down in or pursuant to this national ordinance;
c. to notify the party having reported, in accordance with article 11 with a view to proper compliance with the obligation to report, of the handling of the report. In such a case, the notification shall state only whether data have been furnished in accordance with section b;
d. to conduct an investigation into developments in the field of money-laundering and as to improvement of the methods to prevent and detect money-laundering;
e. to make recommendations, having heard the Bank van de Nederlandse Antillen (Central Bank of the Netherlands Antilles), for the relevant branches of business as regards the intro-

duction of appropriate procedures for internal control and communication and other measures to be taken to prevent the use of the relevant branches of business for money-laundering purposes;

f. to give information as regards the phenomenon and the prevention of money-laundering.

g. to render yearly a report of its activities and its plans for the next year to the minister of Finance, and to give ~~notice of~~ this report to the minister of Justice.

Article 4

1. The Reporting Center shall keep a register. The Minister of Finance shall be the administrator of the register.

2. The minister of Finance shall lay down rules for the register and shall be responsible for the proper operation thereof.

3. The register shall contain only data necessary for the purposes to which it has been instituted.

4. No data shall be given from the register, unless rules laid down in or pursuant to this national ordinance provide for this.

Article 5

1. The Reporting Center shall be competent, to the extent necessary for the discharge of its tasks, to consult the registers of the authorities and officials in charge of the detection and prosecution of punishable acts.

2. The authorities and officials referred to in the first paragraph shall be bound to allow the Reporting Center to consult as referred to in the first paragraph.

Article 6

The Reporting Center shall be bound to furnish the following data to the authorities and officials in charge of the detection and prosecution of criminal offences:

1° data from which reasonable presumption results that a certain person is guilty of money-laundering or of a criminal offence that lies at the root thereof;

2° data from which it may be reasonably presumed that they are important to the detection of money-laundering or of the criminal offences lying at the root thereof;

3° data from which it may be reasonably presumed that they are important to the prevention or detection of future criminal offences that may underlie money-laundering and that, in view of their seriousness or frequency, or the organized relation in which they will be committed, result in grave invasion of the legal order.

Article 7

1. By national decree containing general measures, rules shall be laid down as regards the furnishing of data from the

register of the Reporting Center, and the conditions subject to which this shall be done, to the officially designated authorities in or outside the Kingdom, having a task comparable to that of the Reporting Center.

2. The furnishing of data, as referred to in the first paragraph, to authorities outside the Kingdom shall take place only on the strength of a treaty.

Article 8

The appointment, suspension and removal of the head and the other personnel of the Reporting Center, shall take place, having heard the guidance committee referred to in article 16, by national decree on the motion of the minister of Finance in agreement with the minister of Justice.

Article 9

The minister of Finance, in agreement with the minister of Justice, having heard the guidance committee referred to in article 16, shall determine the budget and formation of the Reporting Center.

Chapter III
The obligation to report

Article 10

1. Following consultations with the Reporting Center, and having heard the committee referred to in article 16, the minister of Finance and the minister of Justice jointly shall lay down the indicators, if necessary per category of transaction thereby to be distinguished, for a term of up to six months, on the strength of which indicators it shall be judged whether a transaction shall be considered an unusual transaction.

2. The indicators referred to in the preceding paragraph shall remain in effect on the expiry of the term stated in that paragraph, if approved within such term by national decree containing general measures.

Article 11

1. Anyone who renders financial services by virtue of his profession or in the ordinary course of his business, shall be bund to report any unusual transaction thereby made or proposed, to the Reporting Center without delay.

2. To the extent possible, a report shall contain the following data:

a. the identity of the customer;
b. the nature and the number of the customer's proof of identity;
c. the nature, the time and the place of the transaction;
d. the magnitude and, in case of a financial service as referred to in article 1, under a., sub 7°, the allocation and the origin of the moneys, securities, precious metals or

other valuables involved in the transaction;

e. the circumstances on the strength whereof the transaction is considered to be unusual.

Article 12

1. The Reporting Center shall be competent to ask further data or information from the party having reported as also from the party involved in a transaction through the rendering of a financial service as referred to in article 1, under a., sub 7°, on which transaction the Reporting Center has collected data, in order for it to be able to judge whether the data collected must be furnished by virtue of its task, as referred to in article 3, under b.

2. The party from whom these data or information have been requested in accordance with the first paragraph, shall be bound to furnish the Reporting Center with same in writing, as also, in cases deemed urgent in the discretion of the Reporting Center, orally within the term stated by the Reporting Center.

Article 13

By national decree containing general measures, further rules may be laid down as regards the manner in which a report shall be made or, as the case may be, the manner in which data and information, requested on the strength of article 12, first paragraph, shall be furnished.

Article 14

1. Data or information furnished in accordance with articles 11 or 12, second paragraph, may not serve as a basis for or for purposes of a criminal investigation, or prosecution by reason of suspicion of, or as proof in respect of a charge by reason of, money-laundering or a criminal offence lying at the root thereof, by the party having furnished such data or information.

2. The first paragraph shall apply analogously in respect of the person who is employed by the party that furnished data or information, in conformity with articles 11 or 12, second paragraph, or assisted therewith.

Article 15

1. The party who made a report as laid down in article 11 shall not be liable in respect of any damage suffered by a customer or a third party as a result, unless such damage proceeds from willful acting or gross negligence by the party who made the report.

2. The first paragraph shall apply analogously in respect of the person working for the party that furnished data or information in conformity with article 11, or assisted therewith.

Chapter IV
The Guidance Committee

Article 16

1. There shall be a Guidance Committee for the Reporting Center.

2. The Guidance Committee shall consist of up to twelve members and shall determine its own method of operation.

Article 17

1. The committee shall consist of representatives of:

a. the minister of Finance;
b. the minister of Justice;
c. the branches of business falling under the operation of this national ordinance;
d. the supervising authority for the branches of business falling under the operation of this national ordinance;
e. the public prosecutor.

2. The members and substitute members of the committee shall be appointed and dismissed by the minister of Finance on the motion of the authorities referred to in the first paragraph. The appointment shall be for three years. The members may be reappointed once. On composing the committee, the minister of Finance shall aim at achieving a balanced representation of the authorities mentioned.

3. A representative of the minister of Finance shall preside over the committee.

Article 18

The tasks of the committee shall be:

a. to guide the Reporting Center in the functioning thereof;
b. to make its know-how and expertise available to the Reporting Center;
c. if so requested or on its own initiative, to advise the minister of Finance or the minister of Justice among others on:
    1° the method in which the Reporting Center discharges its task;
    2° the determination of the indicators referred in article 10;
    3° the effectivity of the obligation to report.

Article 19

For the proper discharge of its task, the guidance committee may request data from the Reporting Center. The Reporting Center shall be bound to furnish such data. Personal data shall be furnished in anonymous form.

Chapter V
Secrecy

Article 20

A person who, for the application of this national ordinance

or of resolutions adopted pursuant to this national ordinance, performs or has performed any task, shall be prohibited from making further or other use of data or information furnished or received in pursuance of this national ordinance, or from making the same known further or otherwise than for the discharge of his task or as required by this national ordinance.

Article 21

1. The party who makes a report pursuant to article 11, or who pursuant to article 12, second paragraph, furnishes further ~~data or information,~~ shall be bound to secrecy in respect thereof, save insofar as the need for publication shall issue from the objectives of this national ordinance.

2. ~~The party who obtains data or~~ information pursuant to article 3 under c., shall be bound to secrecy in respect thereof.

Chapter VI
Right to inspect

Article 22

1. ~~A person~~ shall be notified, at his request, by or on behalf of the administrator of the register of the Reporting Center within one month whether and, if so, what personal data concerning such person have been entered in the register.

2. The notification referred to in the first paragraph shall not be made insofar as this shall be necessary for the proper discharge of the task of the Reporting Center or, as the case may be, if weighty third party interests shall so require.

3. If the request referred to in the first paragraph is not complied with, the party involved may address a petition to the Court of First Instance within two months from his receipt of the refusal of the request, for the administrator to be ordered still to comply with this request. The Court shall grant this petition insofar as it shall judge same to be well-founded.

Chapter VII
Punitive Provisions

Article 23

1. Any breach or act in contravention of the provisions of articles 11, 12, second paragraph, articles 20 and 21, or pursuant to article 13, to the extent that this occurs intentionally, shall be a criminal offence and shall be punished either with imprisonment of up to four years, or with a money fine of up to five hundred thousand guilders, or with both these punishments.

2. Contravention of the provisions referred to in the first paragraph, to the extent that this occurs unintentionally, shall be an offence and shall be punished either with detention of up to one year, or with a money fine of up to two hundred and fifty thousand guilders, or with both these punishments.

Article 24

In addition to the persons designated under article 8 of the Criminal Procedure Code of the Netherlands Antilles, the officials and other persons designated by national decree shall be in charge of the detection of the facts rendered punishable under article 23. They may demand inspection at all times of all records, the inspection of which is required in their reasonable view for the performance of their task.

Article 25

1. If an act rendered punishable under article 23 is committed by or by order of a legal entity, criminal prosecution may be instituted and punishments shall be pronounced, either against such legal entity, or against those who ordered the act to be committed or those who actually directed the act prohibited or omitted, or against them jointly.

2. An act rendered punishable under article 23 shall be committed among others by or by order of a legal entity, if committed by persons who, either by virtue of employment or otherwise act in the scope of the legal entity, regardless of whether these persons each individually have committed the punishable act, or whether the elements of such act are present with them jointly.

3. If criminal prosecution is instituted against a legal entity, the same shall be represented during prosecution by the manager and, in case of several managers, by any one of these. The representative may appear by proxy. The judge may order the personal appearance of a specific manager; he may then order that such manager be brought into court.

4. As regards the acts rendered punishable under article 23, legal entities shall be deemed, for the purposes of article 19 of the Criminal Procedure Code of the Netherlands Antilles, to reside in the place where they are established.

5. If criminal prosecution is instituted against a legal entity, the services, writs of summons, notices, notifications or other communications prescribed in the Criminal Procedure Code of the Netherlands Antilles shall be effected to the person or the place of residence of the manager and, in case of several managers, to any one of these or at the place where the management has its seat or office, except, in case of a writ of summons, with analogous application of article 130, second and third paragraphs, of the Criminal Procedure Code of the Netherlands Antilles.

6. For the application of the preceding paragraphs, the following shall be treated as a legal entity: the company with no legal personality, the partnership, any other association of persons, and the special purpose fund ("doelvermogen").

Chapter VIII
Final Provisions

Article 26

1. This National Ordinance shall become operative at a time

to be stipulated by national decree.

2. At the time this national ordinance becomes operative, the Minister of Finance and the Minister of Justice, jointly, having heard the authorities referred to in article 17; first paragraph under c. and d., shall lay down - in deviation from the provision contained in article 10, first paragraph, - the indicators, if necessary per category of transaction thereby to be distinguished, for a term of up to six months, on the strength of which indicators it shall be judged whether a transaction shall be considered an unusual transaction.

Article 27

This National Ordinance may be cited as: National Ordinance Reporting of Unusual Transactions.

Given at Curaçao, February 10 1996
J.M. SALEH

The Minister of Finance,
H. HENRIQUEZ

The Minister of Justice,
P.J. ATACHO

Issued on March 1st 1996
The Minister of General Affairs, a.i.
L.A.I. CHANCE

NATIONAL ORDINANCE of February 10th 1996 containing regulations concerning the identification of customers when rendering financial services (National Ordinance Identification when Rendering Financial Services).

IN THE NAME OF THE QUEEN!

The Governor of the Netherlands Antilles,

Whereas:

it is expedient to lay down rules concerning the identification of customers when rendering financial services, and this in connection with the implementation of recommendations 12, 13 and 14 of the Financial Action Task Force on Money Laundering of May 30 1990;

Now, therefore We have thought fit, by and with the advice of the Advisory Council and in consultation with Parliament, to lay down the following national ordinance:

Article 1

In this national ordinance and the stipulations based thereon, the following terms shall have the meaning thereby given:

a. service provider: anyone who renders financial services by virtue of his profession or in the ordinary course of his business;
b. financial services: the following services rendered by a service provider in or from the Netherlands Antilles:
   1° the taking into custody of securities, paper currency, coins, currency notes, precious metals and other valuables;
   2° the opening of an account, on which a balance may be kept in money, securities, precious metals or other valuables;
   3° the renting of a safe-deposit box;
   4° the effecting of payment in connection with the cashing in of coupons or compatable documents of bonds or comparable securities;

For written discussions with Parliament
see documents Session 1995-1996-1803

5° the entering into or mediating at the effecting of a life insurance contract as referred to in article 1, first paragraph, section a., of the National Ordinance Supervision of the Insurance Industry, at a premium as referred to in article 1, first paragraph, section c., of the National Ordinance Supervision of the Insurance Industry in excess of an amount to be stipulated by the Minister;

6° the making of a distribution on account of a life insurance contract as referred to sub 5° which is in excess of an amount to be stipulated by the Minister;

7° the rendering of services in respect of a transaction or of evidently related transactions, having an equivalent or aggregate equivalent equal to or in excess of an amount to be stipulated by the Minister, which may vary for the different kinds of transactions;

8° the crediting or debiting of an account, or causing this to be done, on which account a balance may be kept in money, securities, precious metals or other currency;

9° the providing of other services to be designated by national decree, containing general measures.

c. customer: anyone to whom a financial service is rendered, such to include, in the case of the financial service as referred to in section b., sub 5° and 6°, the party who pays the premium as also the one to whom the distribution is made.

d. the Minister: the minister of Finance;

e. credit institution: a credit institution as referred to in article 1, first paragraph, section a., of the National Ordinance Supervision of Banking and Credit Institutions 1994;

f. life insurance industry: a life insurance business as referred to in article 1, first paragraph, section d., of the National Ordinance Supervision of the Insurance Industry.

Article 2

1. The service provider shall be bound to establish the identity of a customer before rendering any financial service to such customer. If the customer is an individual who is not competent to perform the legal act related to the financial service, it will suffice for the service provider to establish the identity of the person thereby acting as the legal representative.

2. The first paragraph shall apply moreover if:

a. it is not known on the rendering of the financial service, referred to in article 1, section b., under 7°, what amount will be involved;

b. the premium referred to in article 1, section b., sub 5°, the distribution referred to in article 1, section b., under 6°, or the amount of the transaction referred to in article 1, section b., under 7°, is smaller than the amount stipulated pursuant to such provisions, but the financial service relates to a transaction that, based on the indicators laid

down pursuant to article 10 of the National Ordinance Reporting of Unusual Transactions, must be deemed to be an unusual transaction as referred to in that national ordinance; or

c. the premium referred to in article 1, section b., sub 5°, the distribution referred to in article 1, section b., under 6°, or the amount of the transaction referred to in article 1, section b., under 7°, is smaller than the amount stipulated pursuant to such provisions, but the service provider knows or reasonably must presume that the transaction to which the financial service relates forms part of a totality of related transactions, involving various financial institutions.

3. The first paragraph shall not apply in respect of the financial services referred to in article 1, section b., sub 5° and 6° insofar as concerning a pension insurance offered by a life insurance business, unless the same is redeemed or serves as security.

4. The Minister may grant exemption from the provisions contained in the first paragraph, if as a customer shall act:

a. an enterprise or institution, registered pursuant to article 11 of the National Ordinance Supervision of Banking and Credit Institutions 1994, or a life insurance business as referred to in article 1, first paragraph, section d. of the National Ordinance Supervision of the Insurance Industry;

b. an enterprise or institution belonging to a category to be designated by the Minister.

5. The Minister may grant a release from the first paragraph if so requested.

6. An exemption as referred to in the fourth paragraph and a release as referred to in the fifth paragraph may be restricted and be subjected to rules.

Article 3

1. If the customer is an individual, the identity shall be established with the aid of one of the following documents:

a. a valid driver's license as referred to in the road and traffic ordinances of the respective island territories;

b. a valid identity card as referred to in the National Ordinance Identity Cards;

c. a valid travel document designated as such by or pursuant to the Passport Act;

d. a valid foreign passport;

e. another document to be designated by the Minister.

2. If the customer is a Netherlands Antilles legal entity or a foreign legal entity established in the Netherlands Antilles, the identity shall be established with the aid of a certified extract from the register of the Chamber of Commerce and Industry in the island territory where such legal entity is registered, or with the aid of a deed drawn up by a civil-law notary established in the Netherlands Antilles.

3. If the customer is a foreign legal entity not established in the Netherlands Antilles, the identity shall be established with the aid of a deed drawn up by a civil-law notary established in the Netherlands Antilles.

4. The Minister shall determine the minimal data to be inserted in the notarial deed referred to in the second and third paragraphs.

Article 4

1. In deviation from article 3, the obligations referred to in article 2 shall be met if the service provider avails himself, when establishing the identity of a customer, of the data determined by him earlier when rendering financial services to such customer, in conformity with the stipulations of this national ordinance, all this provided that the data shall not be older than 5 years.
The first sentence shall not apply if a financial service is involved in respect of a transaction with an equivalent or aggregate equivalent equal to or in excess of an amount to be determined by the Minister, and this service is rendered by the service provider through a branch other than the one that established the customer's identity.

2. The obligation, referred to in article 2 first paragraph, with relation to a financial service as referred to in article 1, section b., sub 5° and 6° shall be complied with if the first premium payment is made to the charge of, or the distribution by reason of the life insurance contract is paid in favour of an account of the customer with a credit institution, registered pursuant to article 11 of the National Ordinance Supervision of Banking and Credit Institutions 1994, or a life insurance business as referred to in article 1, section b., of the National Ordinance Supervision of the Insurance Industry or a credit institution or life insurance business domiciled in a state to be designated by the Minister, on condition that the service provider rendering the financial service has obtained confirmation from such service provider that the establishment of the customer's identity and the registration thereof have been executed in its name.

3. The obligation referred to in article 2, first paragraph, with relation to the financial service, referred to in article 1, section b., sub 1°, 2°, 4° and 7° insofar as relating to the trade in securities, shall be complied with if the first payment relating to the financial service is made by the customer, or if a payment is made to the customer to the charge or benefit of an account of such customer with a credit institution registered pursuant to article 11 of the National ordinance Supervision of Banking and Credit Institutions 1994 or a credit institution domiciled in a state designated by the Minister, and on condition that the service provider has obtained confirmation from the credit institution that the establishment of that customer's identity and the registration thereof have been executed in its name.

4. The third paragraph shall apply analogously in cases to be designated by the Minister.

5. Paragraphs two to four, inclusive, shall not apply if the financial service relates to a transaction that must be deemed to be an unusual transaction in terms of the National Ordinance Reporting of Unusual Transactions, or if article 5, fourth para-

graph, applies.

Article 5

1. The service provider shall be bound to establish the identity of the individual appearing before him on behalf of a customer or on behalf of a representative of a customer, and this in accordance with articles 3 and 4, before he proceeds to the rendering of the financial service.

2. The service provider shall be bound to verify whether the individual appearing before him is acting for himself or for a third party.

3. If the individual acts for a third party, the service provider shall be bound to establish the identity of such third party with the aid of the documents, referred to in article 3, to be submitted by the individual, unless article 2, first paragraph, second sentence, applies. If the third party acts for another third party, the service provider shall be bound to establish the identity of such third party in the same manner, unless article 2, first paragraph, second sentence applies.

4. If the service provider knows or reasonably must presume that the individual appearing before him is not acting for himself, the service provider shall be bound to take reasonable measures in order to discover the identity of the customer for whom such individual is acting and, in the event of a customer being represented by a third party, the identity of such representative.

5. The third and fourth paragraphs shall not apply if the individual is a service provider or acts on behalf of a service provider, in respect of whom an exemption as referred to in article 2, fourth paragraph, or a release as referred to in article 2, fifth paragraph, applies, on condition that such service provider [establishes *] the identity of the third party, for whom he is acting, in accordance with this national ordinance or in accordance with the legislation of a state designated by the Minister.

[* translator's note: the verb/predicate is missing]

6. The Minister may grant exemption and, on request, release from the third and fourth paragraphs. An exemption and a release may be restricted and may be subjected to rules.

Article 6

The service provider shall be bound to lay down the following data in such a manner that these shall be accessible:

a. the name, the address and the residence or the domicile of the customer and of the person to whose name the deposit or the account is placed, of the person who shall have access to the safe-deposit box or the person to whose name a payment or transaction shall be made, as also of their representatives;

b. the nature, the number and the date and place of issue of the document, with the aid whereof the identity has been established, save if article 4 applies;

c. the nature of the financial service; and

d.1. in case of the taking into custody of the valuables referred to in article 1, section b., sub 1°: the deposit number concerned and the market value represented by these valuables at the time they are taken into custody or, in the absence of a market value, the amount represented by these valuables, calculated according to other valuation principles customary in business transactions, or if the amount represented by these valuables cannot reasonably be determined, an accurate description of such valuables;

2. in case of an account being opened: a clear description of the kind of account and the number assigned to such account;

3. in the case of a safe-deposit box being rented: the number or other distinguishing designation of the safe-deposit box concerned;

4. in the case of payments being made in respect of the cashing in of coupons or comparable documents of bonds or comparable securities: the amount involved in the transaction and the account number in question;

5. in the case of a life insurance contract being effected: the number of the account to the charge whereof the premium payment is made;

6. in the case of a distribution being made by reason of a life insurance contract: the number of the account in favour of which the distribution is made;

7. in the case of a financial service as referred to in article 1, section b., sub 7°: the amount involved in the transaction and the account number in question;

8. in the case of a financial service as referred to in article 1, section b., sub 9°: the data relating to such service, as designated by national decree containing general measures.

Article 7

The service provider shall be bound to keep the data referred to in article 6 in an accessible manner until five years from the termination of the agreement, on the grounds whereof the financial service was rendered, or until five years from the execution of a financial service as referred to in article 1, section b., sub 4° or 7°.

Article 8

The service provider shall be prohibited from rendering a financial service if the identity of the customer has not been established in the manner prescribed in this national ordinance.

Article 9

1. Contravention of the rules laid down by or pursuant to article 2, first, second and sixth paragraphs, articles 5, 6, 7 and 8 of this national ordinance, to the extent that this occurs intentionally, shall be a criminal offence and shall be punished with either imprisonment of up to four years, or with a money fine of up to five hundred thousand guilders, or with both these punishments.

2. Contravention of the rules laid down by or pursuant to article 2, first, second and sixth paragraphs, articles 5, 6, 7 and 8 of this national ordinance, to the extent that this occurs unintentionally, shall be an offence and shall be punished with either detention of up to one year, or with a money fine of up to two hundred and fifty thousand guilders, or with both these punishments.

Article 10

In addition to the persons designated under article 8 of the Criminal Procedure Code of the Netherlands Antilles, the officials and other persons designated by national decree shall be in charge of the detection of the facts rendered punishable under article 9. They may demand inspection at all times of all records, the inspection of which in their reasonable view is required for the performance of their task.

Article 11

1. If an act rendered punishable under article 9 is committed by or by order of a legal entity, criminal prosecution shall be instituted and punishments shall be pronounced, either against such legal entity, or against those who ordered the act to be committed or those who actually directed the act prohibited or omitted, or against them jointly.

2. An act rendered punishable under article 9 shall be committed among others by or by order of a legal entity, if committed by persons who, either by virtue of employment or otherwise, act in the scope of the legal entity, regardless of whether these persons each individually have committed the punishable act, or whether the elements of such act are present with them jointly.

3. If criminal prosecution is instituted against a legal entity, the same shall be represented during prosecution by the manager and, in case of several managers, by any one of these. The representative may appear by proxy. The judge may order the personal appearance of a specific manager; he may then order that such manager be brought into court.

4. As regards the acts rendered punishable under article 9, legal entities shall be deemed for the purposes of article 19 of the Criminal Procedure Code of the Netherlands Antilles to reside in the place where they are established.

5. If criminal prosecution is instituted against a legal entity, the services, writs of summons, notices, notifications or other communications prescribed in the Criminal Procedure Code of the Netherlands Antilles shall be effected to the person or the place of residence of the manager and, in case of several managers, to any one of these or at the place where the management has its seat or office, except, in case of a writ of summons, as referred to in article 130, second and third paragraphs, of the Criminal Procedure Code of the Netherlands Antilles.

6. For the application of the preceding paragraphs, the following shall be treated as a legal entity: the company with no legal personality, the partnership, any other association of

persons, and the special purpose fund ("doelvermogen").

Article 12

This National Ordinance shall become operative at a time to be stipulated by national decree.

Article 13

This National Ordinance may be cited as: National Ordinance Identification when Rendering Financial Services.

Given at Willemstad, February 10 1996
J.H. SALEH

The Minister of Finance,
H. HENRIQUEZ

Issued on March 1st 1996
The Minister of General Affairs, a.i.
L.A.I. CHANCE

UNITED NATIONS

E/NL.1997/6-10
28 April 1997
ENGLISH ONLY*

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

ARUBA

Communicated by the Government of The Netherlands

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

Contents

		Page
E/NL.1997/6	State Ordinance of December 22, 1993 containing regulations concerning the penalization of laundering money, securities, and claims (State Ordinance Penalization Laundering)	2
E/NL.1997/7	State Ordinance of December 20, 1995 concerning the obligation to report unusual transactions in rendering financial services (State Ordinance Obligation to Report Unusual transactions)	11
E/NL.1997/8	State Ordinance of December 20, 1995 containing regulations concerning the identification for rendering financial services (State Ordinance Identification for Rendering Financial services)	50
E/NL.1997/9	Ministerial Regulation of February 29, N° 1, for giving effect to Article 10, first paragraph, of the State Ordinance Obligation to Report Unusual Transactions (SPG 1995, N° 85)	64
E/NL.1997/10	State Ordinance Narcotics	76

*Note by the Secretariat: This document is a direct reproduction of the texts communicated to the Secretariat by the Government of The Netherlands.

1993 no. 70

STATE ORDINANCE of December 22, 1993 containing regulations concerning the penalization of laundering money, securities, and claims (State Ordinance Penalization Laundering).

Issued December 28, 1993

The Minister of Justice
H.R. Croes

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having taken into consideration:

- that it is necessary to give implement Article 3 of the Treaty concluded in Vienna on December 20, 1988 against the illicit trade in narcotics and psychotropic substances (Treaty Gazette 1989, 97) and Article 6 of the Treaty concluded in Strasbourg on November 8, 1990 concerning the laundering, investigation, seizure and forfeiture of proceeds from crimes (Treaty Gazette 1990, 172);
- that it is desirable to implement the recommendations of the Financial Action Task Force on money laundering established in Paris in July 1989, as well as the recommendations of the Caribbean drug money laundering conference held in Aruba in June 1990;

Has, having heard the Advisory Council, in joint consultation with Parliament, laid down the following State Ordinance:

Article 1

1. The following persons shall be liable to either imprisonment not exceeding twelve years, or a fine not exceeding Afls. 1,000,000.-- or to both penalties, as being guilty of wilfully laundering money, securities or claims:

a. he who acquires, has in his possession, or transfers money, securities, or claims while at the time of the acquisition, having in possession, or the transfer of the money, the securities, or the claims this person knew or had to know that the money, the securities, or the claims was, or were acquired through criminal offense;

b. he who has in his possession or transfers wilfully, for profit purposes, money, securities, or claims acquired through criminal offense.

2. He who wilfully derives profit from the proceeds of money, securities, or claims acquired through criminal offense, shall be liable to the same penalty.

Article 2

He who habitually commits wilful laundering of money, securities, or claims, shall be liable to either imprisonment not exceeding sixteen years, or a fine not exceeding Afls. 1,250,000.--, or to both penalties.

Article 3

1. The following persons shall be liable to either imprisonment not exceeding four years, or a fine not ex-

ceeding Afls. 250,000.--, as being guilty of laundering money, securities or claims through default:

a. he who acquires, has in his possession, or transfers money, securities, or claims while at the time of the acquisition, having in possession, or the transfer of the money, the securities, or the claims this person should have suspected that the money, the securities, or the claims was, or were acquired through criminal offense;

b. he who has in his possession or transfers, for profit purposes, money, securities, or claims while this person has to suspect in reason that the money, securities, or claims was, or were acquired through criminal offense.

2. He who derives profit from the proceeds of money, securities, or claims while this person has to suspect in reason that the money, the securities, or the claims was, or were acquired through criminal offense, shall be liable to the same penalty.

Article 4

The acts rendered punishable under this State Ordinance are felonies.

Article 5

1. In the event an act rendered punishable under this State Ordinance is committed by a corporate body under Aruban or Foreign law, criminal prosecution can be instituted, and the penalties provided for in this State Ordinance, and the measures provided for in the Criminal Code of Aruba (GG 1991 no. GT 50) can be imposed, if they are eligible therefor:

a. on the corporate body, or

b. on those who gave the order to this act, as well as on those who were actually in charge of the prohibited act, or

c. against those mentioned under a and b together.

2. For the application of the first paragraph, the non-corporate company, the partnership, and the terminal funding capital shall be put on a par with a corporate body.

Article 6

Article 11d of the State Ordinance Narcotics (GG 1990 no. GT 7) shall be worded as follows:

The provisions in the Articles 11a, 11b, and 11c as regards objects shall also apply to vehicles, vessels, and substances in as far as possible.

Article 7

1. This State Ordinance shall become effective as of the day after the day of its insertion in the Government Gazette of Aruba.

2. It may be referred to as State Ordinance Penalization Laundering.

Given in Oranjestad, December 22, 1993

O. Koolman

The Minister of Justice
H.R. Croes

State Ordinance containing regulations concerning the penalization of the laundering of money, securities, and claims (State Ordinance Penalization Laundering)

EXPLANATORY MEMORANDUM

General explanation

The last few years one may notice the trend that crime and criminality more and more often take place in an organized way. In most cases it concerns crimes involving large amounts of money. This gave rise to the opinion that fighting this kind of criminality can be taken up most effectively by tackle the perpetrators - in addition to imprisonment - on the point for which they committed the crime in the ~~first~~ place: financial gain. ~~After having~~ inserted the measure of seizure of fraudulently gained profit in Article 38e of the Criminal Code of Aruba (GG 1991 no. GT 50) for this purpose in 1988 already, it is desirable in addition to this in the Government's opinion, to render the laundering of money, securities, or claims punishable as a separate felony. By doing this one also gives effect to Article 3 of the Treaty concluded in Vienna on December 20, 1988 against the illicit trade in narcotics and psychotropic drugs (Treaty Gazette 1989, 97) and Article 6 of the Treaty concluded in Strasbourg on November 8, 1990 concerning the laundering, seizure and forfeiture of the proceeds from crimes (Treaty Gazette 1990, 172). The legislative proposals for Acts of the Realm to ratify these treaties have already been introduced in the Lower Chamber of the States General (22 080 [R1406], 22 081 [R1407]).

Also at an international level, one has been engaged in the fighting of money laundering for some time already. For this purpose the so-called G-7 countries (the seven largest industrial countries) i.a. established a Financial Action Task Force on money laundering in 1989. On February 7, 1990, this Task Force issued a report containing forty recommendations to realize this objective. This bill satisfies the national statutory measurers deemed necessary.

Finally, the Government observes that the 21 recommendations of the Caribbean drug money laundering conference held in Aruba in June 1990 have also played a role in drawing up this bill.

The penalization of laundering in relation to fencing:

In the Articles 431 through 432a of the Criminal Code of Aruba, fencing is rendered punishable (under the name "begunstiging" [helping a perpetrator of a punishable act after the offense has been committed, trans.]). In addition to this the Articles 11a through 11c of the State Ordinance

Narcotics (GG 1990 no. GT 7) contain special "begunstiging" provisions imposing considerably severer penalties. According to current jurisprudence the word "object" in these Articles is understood to also include "money", so that it may be said that money laundering is already punishable. It is once again explicitly stipulated in Article 11d of the State Ordinance Narcotics, for that matter, that for the purpose of this State Ordinance "objects" has to be understood to include moneys, other instruments of payment and claims. Nevertheless, the following considerations constitute reasons to render the laundering of money, securities, and claims punishable as a separate felony.

In the first place, in view of the necessity of effectively fighting the laundering of these objects, the aforementioned fencing provisions do not suffice. For they refer to the acquisition and possession of objects acquired through crime, but not to the offering or transfer of such objects. In the Government's judgment also the person who e.g. offers a bank an amount of money acquired through crime, has to be punishable. This is effected by means of the words "he who (...) transfers money" inserted in the Articles 1 and 3.

Contrary to the fencing provisions, the descriptions of felonies proposed are especially tailored to the laundering of money, securities, and claims. As already observed, the description of the felony, which is based on the relevant articles in aforementioned Treaties, widens the punishability of laundering, and simplifies the onus of proof for this felony. Consequently, this description of the felony enables the Public Prosecution and the police to act more decisively than on the basis of the general fencing provisions in the Criminal Code of Aruba.

In the second place the Government is of the opinion that the present punishment for money laundering (fencing) not acquired through drugs offenses, is too low; namely imprisonment not exceeding six years, if it concerns a habitual offense (Article 432 of the Criminal Code). Such a maximum penalty - as may be assumed - does not make enough impression on those who commit organized crime. Furthermore, it is pointed out that the difference in punishment between laundering drugs moneys and criminal moneys not coming from drugs offenses, is not very well defensible. Meanwhile, experience has shown that drugs traffickers also commit other forms of serious criminality, such as e.g. arms traffic. Laundering moneys acquired through this should not be less punishable than laundering drugs moneys. Moreover, it has appeared in the meantime that such a restriction of the penalization to laundering drugs moneys causes the necessary problems in rendering proof. For the Public Prosecution will have to prove that the suspect knew or should have known in reason that the money is coming from the narcotics trade; this is not simple in many cases, while, based on other information known to the Public Prosecution, it is plausible that it concerns "tainted" money. For the rest, it is repeated here what was stated in page 1 of this memorandum, that - in addition to imposing

the fine under this draft State Ordinance - also the withdrawal from circulation and the seizure of the fraudulently acquired profit can be imposed.

In the third place the Government observes that in the State Ordinance Narcotics habitual fencing is not rendered punishable. In view of the nature of such organized activities, one cannot do without the penalization of habitual laundering, especially in fighting organized crime.

Finally, the Government is of the opinion that, in view of the international attention to the fighting of laundering, it has to be made clear to the international community unambiguously, that laundering is punishable in Aruba, and that - in view of both the maximum penalties proposed, and the actual investigation and prosecution, fighting it is taken seriously. Furthermore, a separate penalization of laundering, as proposed in the present draft, whereby the wording of the description of the felony has been brought into line with the relevant articles in the international treaties, simplifies the international cooperation in the criminal field concerning laundering. In this connection it is of importance that also as regards a corporate body under foreign law it is provided that it can commit laundering, and that it is liable to punishment as such.

Explanation of each clause

Re Articles 1 through 3

The penalization of laundering proposed is a special "begunstiging" provision: a lex specialis of fencing. On the analogy of the fencing provisions in the Criminal Code of Aruba and the State Ordinance Narcotics, a distinction is made between wilful and habitual laundering and laundering through default. Article 1 penalizes wilful laundering. The second paragraph of both Article 1 and Article 3 proposed (also on the analogy of these fencing provisions) penalize the wilful derivation of profit and the derivation of profit through default from money acquired through crime. There is question of this, for example, if one makes use of goods bought with criminal moneys.

The acts included in the description of the felony are: the acquisition, possession, and transfer. The acquisition and transfer of money, securities, or claims includes all acts resulting in somebody's acquiring or transferring the actual control of the money or the claim. Possession covers any actual possession, irrespective of the purpose for which one has it, or the title on which it is based. For possession it is not necessary that one can always dispose of the money without delay. It also includes being able to dispose of the money which is kept e.g. in a safe deposit abroad.

The intention is to render the person who accepts the money from the criminal, or who keeps it or disposes of it (again) liable to punishment. On the analogy of Article 3

of the Vienna Treaty and Article 6 of the Strasbourg Treaty, it is explicitly included in the description of the felony that at the time of the acquisition, possession, or transfer of the money, the securities, or the claims, the person in question knew or should have suspected in reason that the money is coming from a crime. Otherwise, the person, who at the time of the acquisition, possession, or transfer of the money, acted in good faith but finds out in course of time that the money was acquired through crime, would commit laundering as of that moment, as long as he has this money in his possession, or as soon as he transfers it. This would stretch the penalization of laundering too far. Persons who absolutely act in good faith and incur no reproach whatsoever, would be rendered punishable in that case. This is otherwise if these persons, who meanwhile found out that it concerns tainted money, keep or transfer it for profit purposes. The first paragraph of Article 1 renders these acts punishable. So, this provision does not intend to make it impossible for the acquirer in good faith, who later on discovers the criminal origin of the money, to dispose of the money with impunity. Only if he acts in this way "for profit purposes" is he liable to punishment.

It is included as a component of the proposed description of the felony that the money of the claim was acquired through crime. Therefore, as already explained above, laundering is not limited to drugs offenses. The penalization covers all kinds of crimes. It is immaterial whether the perpetrator of the crime through which the money or the claim was acquired, is personally punishable, whether the crime has become extinguished by limitation, or that another hindrance bars the prosecution, or whether the crime was committed within the scope of Aruban criminal law.

In the bill securities are understood to be all documents constituting evidence of a claim on a third person, for example registered stock, or bearer stock, bonds, checks, bills of exchange, and the like. Claims are understood to be personal rights on a third party.

The punishments proposed for the wilful felony of Article 1 and the "through default" variant (as proposed in Article 3) are in line with the punishments for wilful fencing and fencing through default in the State Ordinance Narcotics, respectively a maximum of twelve years imprisonment and a fine not exceeding one million florins, and a maximum of four years imprisonment and a fine not exceeding Afls. 250,000.-- florins. The same can be said of habitual laundering inserted in Article 2, by imposing a penalty hereon not exceeding sixteen years and a fine not exceeding Afls. 1,250,000.-- florins. Just like in case of a conviction under the State Ordinance Narcotics, for that matter, these penalties can also be imposed together.

Re Article 4

In view of the seriousness of the acts rendered pun-

ishable in this bill, it is self-evident in the Government's opinion that it concerns felonies here.

Re Article 5

In anticipation of a general regulation concerning the penalization of corporate bodies, which the Government intends to have inserted in the Criminal Code of Aruba, it is proposed in this Article to provide that also corporate bodies can commit the felonies of this bill, and consequently are punishable as well. In this way, if necessary, one will also be able to take action against banks and other institutions that commit laundering.

Re Article 6

Now that it is proposed to penalize the laundering of money, securities, and claims separately, laundering will no longer be prosecuted based on the special fencing provisions in the State Ordinance Narcotics, therefore it is proposed to delete the words "moneys and other instruments of payment" from Article 11d of this State Ordinance.

The Minister of Justice,

was signed:
H.R. Croes

1995 No. 85

State Ordinance of December 20, 1995 concerning the obligation to report unusual transactions in rendering financial services (State Ordinance Obligation to Report Unusual Transactions)

Issued December 29, 1995

The Minister of Justice
E.J. Vos

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having taken into consideration:

that it is desirable, for the implementation of the recommendations 9, 10, 15, 16, 17, 18, 20, 24, 28, and 32 of the Financial Task Force on Money Laundering of May 30, 1990, to make the reporting of unusual transactions in rendering financial service obligatory, in order that by doing so a contribution can be made to the suppressing of the use of the Aruban financial system for laundering money proceeding from criminal activities.

Has, having heard the Advisory Council, in joint consultation with Parliament, laid down the following State Ordinance:

Chapter I

General Provisions

Article 1

For the purposes of this State Ordinance and the provisions based hereon, the following shall be understood by:

a. Financial Service: performing the following acts in or from Aruba:
   1. the safe keeping of stock, banknotes, coins, currency notes, precious metals, and other assets;
   2. opening an account in which an amount in money,

stock, precious metals, or other assets can be kept;

3. renting out safe-deposit boxes;
4. making a payment on account of the cashing of coupons or similar documents of bonds, or similar securities;
5. concluding a life insurance agreement as meant in part h, as well as acting as an intermediary in the conclusion hereof;
6. making a payment on account of a life insurance agreement as meant under 5;
7. crediting or debiting an account in which an amount of money, stock, precious metals, or other assets can be kept, or cause same to be credited or debited;
8. exchanging Aruban florins or foreign exchange;
9. rendering other services to be designated by State Decree containing General Administrative Orders;

b. Client: the natural person or legal entity to whom/which, or for the benefit of whom/which a financial service is rendered, as well as, in case of a financial service as meant in part a, under 5 and 6, the one who pays the premium, as well as those for the benefit of which the payment is made;

c. Transaction: an act or a complex of acts for the benefit of a Client in connection with buying one or more financial services;

d. Unusual Transaction: a transaction that may be designated as such based on the indicators laid down in pursuance of Article 10;

e. Report: a report as meant in Article 11;

f. Reporting Center: the reporting center meant in Article 2;

g. Commission: the commission meant in Article 16;

h. Life Insurance Agreement: an agreement whereby the insurer undertakes against payment of a premium to pay

benefits as a lump sum or in installments to the insurant or a beneficiary designated by the latter, and whereby the benefit based on the payment of premium is made dependent in one way or another on the being alive or the death of a certain person.

Chapter II

The reporting Center Unusual Transactions

Article 2

There shall be a Reporting Center Unusual Transactions, which comes under the Minister of Finance and under the direction of a Head.

Article 3

The task of the Reporting Center shall be:

a. the collection, recording, processing, and analyzing of the information it obtains in order to ascertain whether this information may be of importance to the prevention and detection of criminal acts.
b. furnishing information in conformity with the provisions by or in pursuance of this State Ordinance;
c. informing the person who made a Report in conformity with Article 11 with a view to the correct compliance with the obligation to report, as regards the disposal of the report. In that case this person shall only be informed whether furnishing the information took place in conformity with part b;
d. to inquire into the developments in the field of money laundering and the improvement of methods to prevent and detect money laundering;
e. making recommendations, having heard the Central Bank of Aruba, for the relevant branches of industry concerning the introduction of adequate procedures for

internal control and communication and other measures to be taken for the prevention of the use of these branches of industry for money laundering;

f. providing information concerning the forms in which money laundering manifests itself and the prevention of money laundering;

g. reporting annually on its activities and its plans for the coming year to the Minister of Finance, and to bring this report to the knowledge of the Minister of Justice.

Article 4

1. The Reporting Center shall keep a register. The Minister of Finance shall be the keeper of the register.

2. The register shall only contain information obtained lawfully, and which is required for the purpose for which set up.

3. The register shall only contain information that was obtained lawfully, and is necessary for the object for which it was opened.

4. No information from the register shall be furnished, unless provided for by the rules by or in pursuance of this State Ordinance.

Article 5

1. For the purpose of a proper execution of its task, the Reporting Center shall be authorized to inspect the registers of the agencies and the officials charged with the detection and prosecution of punishable acts.

2. The agencies and officials mentioned in the first paragraph are obligated to allow the Reporting Center the inspection meant in the first paragraph.

Article 6

The Reporting Center is obligated to provide the agencies and officials charged with the investigation and prosecution of criminal acts, with the following information:

a. information giving rise to a reasonable suspicion that a certain person committed money laundering or an underlying criminal act;
b. information of which it can be assumed in reason that it is of importance to the detection of money laundering or the underlying criminal acts;
c. information of which it can be assumed in reason that it is of importance to the prevention or detection of future criminal acts that may be underlying money laundering and which, in view of their seriousness or frequency, or the organized level at which they will be committed, constitute a serious infringement of the legal order.

Article 7

1. By State Decree containing General Administrative Orders, rules shall be laid down concerning the provision of information from the Reporting Center's register as well as the conditions on which this will take place, to agencies designated by the authorities, within or outside the Kingdom, having a task similar to the one of the Reporting Center.

2. The provision of information meant in the first paragraph to agencies outside the Kingdom shall only take place on the basis of a treaty.

Article 8

Appointment, suspension, and dismissal of the Head and the other members of the staff of the Reporting Center

shall take place, having heard the Commission, by State Decree by and with the advice of the Minister of Finance in agreement with the Minister of Justice.

Article 9

The Minister of Finance, having heard the Commission, and in agreement with the Minister of Justice, shall determine the budget and formation of the Reporting Center.

Chapter III

The obligation to report

Article 10

1. After consultation with the Reporting Center, and having heard the Commission, the Minister of Finance and the Minister of Justice shall jointly determine, for a period not exceeding six months, the indicators - if necessary per branches of industry and professional groups, or categories of Transactions to be distinguished for this purpose.

2. Based on the indicators, meant in the first paragraph, it shall be judged which Transactions have to be deemed unusual.

3. If necessary, the indicators shall be determined per branche of industry and professional group, after making a survey of the financial services rendered by the branche of industry or professional group concerned.

4. The indicators meant in the first paragraph shall remain in force after the lapse of the period mentioned in the first paragraph, if they are sanctioned by State Decree containing General Administrative orders within this period of time.

Article 11

1. Anyone who renders a Financial Service by virtue of his profession or business, is obligated to promptly report to the Reporting Center a transaction performed or intended to be performed, which is deemed unusual based on the indicators meant in Article 10.

2. In as far as possible a Report shall contain the following information:

a. the Client's identity;
b. the nature and number of the Client's identity card;
c. the nature, the time, and the place of the Transaction;
d. the size and in case of a Financial Service meant in Article 1, part a, under 7, the destination and origin of the moneys, stock, precious metals, or other assets involved in the Transaction;
e. the circumstances based on which the Transaction is deemed unusual.

Article 12

1. The Reporting Center shall be authorized to request additional data or information from the person who made a Report, as well as from the person who, due to the rendering of a Financial Service as meant in Article 1, part a, under 7, is involved in a Transaction concerning which the Reporting Center has collected information, in order to be able to judge whether information collected has to be furnished based on its task meant in Article 3, part b.

2. The person from whom information or data is requested in conformity with the first paragraph, is obligated to provide same in writing, as well as - in urgent cases in the judgment of the Reporting Center - orally, within the period of time stipulated by the Reporting Center.

Article 13

By State Decree containing General Administrative Orders, additional rules may be given concerning the way in which a Report has to be made, respectively data and information requested in pursuance of Article 12, first paragraph, have to be provided.

Article 14

1. Data and information supplied in conformity with the Articles 11 or 12, second paragraph, cannot serve as basis for, or for the purposes of, a criminal investigation or prosecution on account of suspicion of, or as evidence in connection with a charge on account of infringement of the State Ordinance Penalization Money Laundering (SPG 1993, No. 70)[1/] by the person who provided these data or information.

2. The first paragraph shall similarly apply to the person who is employed by the person who supplied data or information in conformity with the Articles 11 or 12, and who has assisted therein.

Article 15

The person who proceeded to make a Report based on Article 11, shall not be liable for the damage suffered by a third party in consequence hereof, unless it is made plausible that, in view of all facts and circumstances, one should not have proceeded to reporting in reason.

Chapter IV

The Counseling Commission

1/ E/NL.1997/6

Article 16

1. There shall be a Counseling Commission for the Reporting Center.

2. The Counseling Commission shall consist of no more than twelve members, and it shall determine its own working procedures.

Article 17

1. the commission shall consist of representatives of:

a. the Ministry of Finance;
b. the Ministry of Justice;
c. the branches of industry falling under the scope of this State Ordinance;
d. the supervisory authorities for the branches of industry falling under the scope of this State Ordinance;
e. the Public Prosecution;
f. the police.

2. The members members of the Commission shall be appointed and dismissed by the Minister of Finance on the recommendation of the agencies and institutions meant in the first paragraph. When composing the commission, the Minister of Finance shall seek a balanced distribution of the agencies/institutions represented.

3. A representative of the Ministry of Finance shall act as chairman of the Commission.

Article 18

The task of the Commission shall be:

a. to counsel the Reporting Center as regards its functioning;
b. to make its knowledge and expertise available to the Reporting Center;
c. to advise the Minister of Finance or the Minister of

Justice jointly if so requested, or on its own initiative, on i.a.:

1. the way in which the Reporting Center performs its task;
2. the determination of the indicators meant in Article 10;
3. the effectiveness of the obligation to report.

Article 19

The Counseling Commission can request information from the Reporting Center for the purpose of a proper performance of its task. The Reporting Center is obligated to provide this information. Personal data shall be provided in anonymous form.

Chapter V

Secrecy

Article 20

Any person, who by virtue of the application of this State Ordinance or of Decrees in pursuance of this State Ordinance performs or performed any task, is prohibited from using data or information supplied or received in pursuance of this State Ordinance, any further or in any other way, or to disclose it further or in any other way, than is required for carrying out his task, or than is required by this State Ordinance.

Article 21

1. The person who makes a Report in pursuance of Article 11, or who supplies further information or data in pursuance of Article 12, second paragraph, is obligated to keep this secret, except in as far as the necessity to

disclose it results from the objective of this State Ordinance.

2. The person who received data or information in pursuance of Article 3, under c, is obligated to keep this secret.

Chapter VI

Right of Inspection

Article 22

1. Any person shall be informed, upon his request, by or on behalf of the keeper of the register of the Reporting Center whether, and if so, what personal data concerning this person have been recorded in the register.

2. The information meant in the first paragraph shall not be given in as far as this is necessary for the proper performance of the task of the Reporting Center, or in case weighty interests of third parties require this.

3. In the event the request meant in the first paragraph is not granted, the person in question may apply to the Court in the First Instance, within two months after receipt of the rejection of the request, petitioning to order the keeper to comply with this request as yet. The Court shall allow this request in as far as it deems it well-founded.

Chapter VII

Supervision

Article 23

1. The officials of the Reporting Center designated by Decree of the Minister of Finance shall be charged with the supervision over the compliance with the provisions by or

in pursuance of this State Ordinance by those who are obligated to report as meant in Article 11, first paragraph. Such a designation shall be published by insertion in the Government Gazette of Aruba.

2. By State Decree containing General Administrative Orders rules may be laid down concerning the performance of the duties by the officials designated by virtue of the first paragraph.

3. The officials designated by virtue of the first paragraph shall be authorized exclusively in as far as this is reasonably necessary for the execution of their tasks:

a. to demand from anybody inspection of all books and documents, and to make copies thereof;

b. to enter all places, with the exception of dwelling houses.

4. If necessary, they shall gain access to a place as meant in the third paragraph, part b, with the aid of the strong arm.

5. In the exercise of powers as meant in the third paragraph, the supervisors shall identify themselves, unless, due to this, the objective of the supervision could not be attained due to this. In the latter case they shall identify themselves as soon as this is possible in reason.

Chapter VIII

Penal Provisions

Article 24

1. Infringement of, or acting in violation of, the provisions in the Articles 11, 12, second paragraph, 20, 21, and 23, third paragraph, or by virtue of Article 13, in as far as this took place intentionally, shall be liable either to imprisonment not exceeding four years, or a fine not exceeding five hundred thousand florins, or to both penalties.

2. Infringement of the regulations as meant in the first paragraph, in as far as not committed intentionally, shall be liable to either imprisonment not exceeding one year, or a fine not exceeding two hundred and fifty thousand florins, or to both penalties.

3. The acts rendered punishable in the first paragraph are felonies; the acts rendered punishable in the second paragraph are misdemeanors.

Article 25

1. In the event that an act rendered punishable in Article 24 is committed by or by order of a legal entity, criminal prosecution can be instituted and the penalties imposed either against this legal entity, or against those who ordered the act to be committed, or who actually were in charge of the prohibited act or omission, or against them jointly.

2. An act rendered punishable in Article 24 is committed i.a. by or by order of a legal entity, if it is committed by persons who, either by virtue of employment, or for other reasons, act in the sphere of the legal entity, irrespective of the fact whether these persons committed the punishable act individually, or that the elements of this act are to be found with them jointly.

3. If the criminal prosecution is instituted against a legal entity, it shall be represented during the prosecution by the manager/director, and in the event there are more managers/directors, by one of them. The representative may appear by attorney. The judge may order the appearance of a certain manager/director; in that case he may have him brought in by the strong arm.

4. As regards the acts rendered punishable in Article 24, legal entities shall be deemed to be domiciled, for the application of Article 19 of the Code of Criminal Procedure of Aruba, at the place where they are established.

5. In the event criminal prosecution is instituted

against a legal entity, the services, summonses, notices, notifications, or other communications prescribed in the Code of Criminal Procedure of Aruba shall be addressed to the person or the residence of the manager/director, and in the event that there are more managers/directors, to one of them, or to the place where the Board has its seat or office, except when it concerns a summons meant in Article 130, second and third paragraph of the Code of Criminal Procedure of Aruba.

6. For the application of the preceding paragraphs the non-corporate company, the partnership, and the terminal funding capital shall be put on a par with the legal entity.

Article 26

In the event the officials charged with the investigation, as well as the experts are denied access to a place which is a dwelling house, or which can only be reached via a dwelling house, then they shall only enter without the explicit permission of the occupant with a specific written warrant of the Public Prosecutor in the Common Court of Justice or the Court in the First Instance, and - in case no one of them is an official as meant in Article 8, parts 1 and 3 of the Code of Criminal Procedure of Aruba - in the presence of the assistant prosecutor.

Chapter IX

Final provision

Article 27

1. This State Ordinance shall become effective on a date to be stipulated by State Decree.

2. It may be referred to as the State Ordinance Obligation to Report Unusual Transactions.

The Minister of Finance,
A.W. Engelbrecht

Given in Oranjestad, December 20, 199
O. Koolman

The Minister of Justice